IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :
THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

AS.No. 341 of 1998(A)

OS.206/1996 OF THE SUBORDINATE JUDGE'S COURT, PALAKKAD

APPELLANT: PLAINTIFF:

SINGARAVELU KOUNDER, S/O.ANDIYAPPA KOUNDER,
RESIDING AT POOCHANARI, MARDHANAICKEN PALAYAM,
POLLACHI TALUK, COIMBATORE DISTRICT, TAMIL NADU.

BY ADV. SRI.V.GIRI

RESPONDENTS: DEFENDANTS:
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1. SULAIMAN, S/O.ANEEFA ROWTHER, RESIDING AT SARALPATHI, MEENAKSHIPURAM, MOOLATHARA VILLAGE, CHITTUR TALUK, PALAKKAD DISTRICT.

2. KAMARUNNISSA, W/O.SULAIMAN, -DO- -DO-

3. ABDUL RAZACK ROWTHER, S/O.HIDAYATH ROWTHER, RESIDING AT KUMARANOOR, KUNNAMKATTUPATHY VILLAGE, CHITTUR TALUK.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.P.G.RAJAGOPALAN
SRI.M.GOPIKRISHNAN NAMBIAR

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 1/03/2007, ALONG WITH AS NO. 346 OF 1998 AND AS NO. 422 OF 1998 THE COURT ON 15/3/2007 DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T. SANKARAN, JJ.

A.S.NOS.341, 346 & 422 OF 1998

Dated this the 15th day of March, 2007

JUDGMENT

Sankaran, J.

These appeals arise out of two suits, namely, O.S. No. 206 of 1996 and O.S. No. 210 of 1996 on the file of the Court of the Subordinate Judge of Palakkad. O.S. No. 206 of 1996 was filed by Singaravelu Kounder against Sulaiman, his wife Kamaraunnissa and Abdul Razack Rowther for a declaration that the agreement for sale executed by defendants 1 and 2 in favour of the third defendant is invalid and for a decree for specific performance of Exhibit A1 agreement for sale executed by defendants 1 and 2 in favour of the plaintiff. There is also a prayer for injunction restraining defendants 1 and 2 from executing sale deed in favour of the third defendant or in favour of strangers. O.S. No. 210 of 1996 was filed by Sulaiman and Kamarunnissa against Singaravelu Kounder for recovery of possession of the plaint A schedule property. The trial court granted a decree in O.S. No.

206 of 1996 for specific performance, for declaration and for injunction. O.S. No. 210 of 1996 was dismissed.

2. A.S. No. 422 of 1998 is filed by defendants 1 and 2 and A.S. No. 341 of 1998 is filed by the plaintiff challenging the judgment and decree in O.S. No. 206 of 1996. A.S. No. 346 of 1998 is filed by the plaintiffs challenging the dismissal of O.S. No. 210 of 1996. Hereinafter, Sulaiman Rowther and Kamarunnissa are referred to as the 'appellants', Singaravelu Kounder is referred as the '1st respondent' and Abdul Razack Rowther is referred to as the '2nd respondent'.

3. The contentions raised by the appellants, inter alia, are the following. The property in question belonged to appellant No. 2. For conducting the marriage of their daughter, the appellants decided to sell a portion of the property (plaint A schedule property in O.S. No. 210 of 1996) to the 2nd respondent for a consideration of Rs. 5,20,000/- as per agreement dated 20-1-1995. Advance of Rs. 50,000/- was received

by them. 2nd respondent did not fulfill his part of the contract within the agreed period of three months. The first respondent came to know about that agreement and the failure of the 2nd respondent to complete the transaction. The 2nd respondent also joined in the settlement talks. The first respondent agreed to purchase the property for Rs. 5,35,000/-. Exhibit A1 agreement dated 9-6-1995 was entered into between the appellants and the first respondent and an advance of Rs. 1,25,000/- was paid by the first respondent. This agreement was executed in order to discharge the debts incurred by the appellants in connection with the marriage of their daughter. Three months' period was fixed for executing the sale deed. Time was the essence of the contract. Respondents 1 and 2 were put in possession of the property excluding the house occupied by the appellants. At the request of the first respondent, time was extended till 7-11-1995. On 3-11-1995, the first respondent paid Rs. 30,000/- to the appellants to discharge their debt to the Police Housing Society. First respondent also agreed to

discharge the debt due to Canara Bank and he deposited Rs. 30,000/- on the next day. On Exhibit A1, an endorsement was made on 3-11-1995 stating that Rs. 60,000/- was paid to the appellants. It was agreed that the first respondent would discharge by 6-11-1995 the debt due from the appellants to the State Bank of Travancore. It was also agreed that the sale deed could be executed on 7-11-1995 after paying the balance due to the appellants. The first respondent prepared the sale deed and stated he would discharge the debt due to State Bank of India and would pay only Rs. 10,000/- to the appellants. The appellants did not agree and insisted on discharging the debt due to the Bank or to pay the full balance sale consideration. On the promise by the first respondent that somebody would bring money to pay the full amount to the appellants, the appellants were made to wait till 5 P. M. in the Sub Registrar's office. By that time, the 2nd respondent filed O.S. No. 836 of 1995 in collusion with the first respondent and obtained an interim order of injunction restraining sale of the property. The first

respondent was not ready and willing to perform his part of the contract. Exhibit A5 notice dated 17-11-1995 was issued by the first respondent demanding specific performance. The appellants sent Exhibit A6 reply stating true facts. Since the first respondent refused to vacate the property, the suit for recovery of possession was filed.

4. The first respondent contended that the property belonged to the appellants. Regarding execution of the agreement, payment of advance, handing over possession of the property and the consideration agreed upon, the case of the first respondent is also the same as that of the appellants. However, the first respondent contended that Rs. 60,000/- was paid to the appellants on 3-11-1995 and in addition, he discharged the loan of Rs. 29,800/- due to Canara Bank on 4-11-1995. Thus, a total consideration of Rs. 2,14,800/- was paid towards consideration. The first respondent was always ready and willing to perform his part of the contract. On 7-11-1995, stamp papers were purchased

and the sale deed was prepared. To save stamp duty and registration expenses, a lower amount was shown as consideration in the document. The request made by him to the appellants to be present in the Sub Registrar's office on 7-11-1995 with the original title deed and relevant documents was not complied with by them. They avoided registration of the document. He suspects that the agreement allegedly executed between the appellants and the second respondent is concocted by them. That agreement is not valid. O.S. No. 836 of 1995 was filed by the second respondent in collusion with the appellants. (O.S. No. 836 of 1995 was subsequently dismissed for default.) The first respondent expressed readiness to deposit the balance sale consideration. An alternative prayer for return of Rs. 2,14,800/- and damages of Rs. 25,000/- was made by the first respondent, apart from the prayer for declaration and specific performance.

5. The second respondent contended that as per the agreement dated 20-1-1995, he had paid Rs. 50,000/-

as advance. Another sum of Rs. One lakh was paid on 17-4-1995 and the period of the agreement was extended till 20-1-1996. The agreement dated 9-6-1995 was collusively entered into between the appellants and the first respondent. The 2nd respondent did not appear in the suit and he was set exparte. No evidence was adduced by him.

6. The trial court arrived at the following findings: (A) Exhibit A1 (b) endorsement by which time for performance of the agreement was extended till 7.11.1995, was made by appellant No. 2 knowing its contents. (B) As per Exhibit A 1 (c) endorsement, the appellants were paid Rs. 60,000/- and that was inclusive of the amount of Rs. 29,800/- paid by the first respondent to Canara Bank evidenced by Exts. A2 and A3 receipts. (C) The case of the first respondent that the appellants were not present before the Sub Registrar's office on 7-11-1995 is not correct. The appellants as well as the first respondent were present before the Sub Registrar's office on that date. (D)

The recital in Ext. X 2 sale deed, prepared by the first respondent, to the effect that Rs. 1,85,000/- was reserved with the first defendant for payment to State Bank of India would not affect the rights of the appellants. (E) The contention raised by the appellants that there was under valuation in Ext. X2 sale deed and therefore the first respondent is not entitled to get a decree for specific performance, is not correct, since even after taking into account the consideration shown in Ext. X2, the total amount payable to the appellants would be Rs. 3,80,000/- (F) Time was not the essence of the contract. (G) The conduct of the first respondent prior and subsequent to the filing of this suit and the attending circumstances will go to show that he was ready and willing to perform his part of contract. (H) By decreeing specific performance, no undue hardship would be caused to the appellants nor would it entail in any unfair advantage to the first respondent.

7. The points arising for consideration in this appeal are the following: (1) Whether the first

respondent is entitled to get a decree for specific performance, declaration and injunction. (2) Whether the first respondent was ready and willing to perform his part of the contract. (3) Whether the first respondent is disentitled to get a decree for specific performance since he has incorporated recitals and conditions in Ext. X2 varying from the terms in Exhibit A1 agreement. (4) Whether time was the essence of the contract. (5) Whether the appellants are entitled to get a decree for recovery of possession as prayed for in O.S. No. 210 of 1996. For the sake of convenience, all the points are considered together.

The Points:-

8. It is admitted by the first respondent in evidence that he is a money lender. The extent of the property involved in the suit is 4.04 acres. There is a house in the property in which the appellants are residing. The house is electrified. There is a well in the property. A 5 H.P. motor pump is installed for irrigation purpose. Possession of the property, except

the house and appurtenant land having an extent of 20 cents, was handed over to the first respondent on the date of Exhibit A1 agreement.

9. In Exhibit A1 agreement for sale, there is no mention that the property was mortgaged to State Bank of Travancore and that a sum of Rs. 1,85,000/- was due to the Bank. According to the appellants, the first respondent agreed to pay the debt due to the bank. The evidence on the side of the first respondent also would indicate that he agreed to discharge the debt due to the bank. Exhibit B4 would show that the Bank had filed a suit in 1993 to recover the amount. The recitals in Exhibit A1 agreement are to the effect that there was no attachment on the property or suit pending in respect of the property.

10. At the instance of the appellants, Exhibit X2 file kept in the office of the Tahsildar, Chittur was called for. Ext. X2 file contains the sale deed prepared at the instance of the first respondent. The

consideration stated therein is Rs. 1,95,000/- and a sum of Rs. 1,85,000/- is reserved with the first respondent for the purpose of discharging the debt due to the State Bank of Travancore. Stamps were purchased for the sale deed on the basis of the consideration of Rs. 1,95,000/-If the sale deed prepared at the instance of the first respondent is taken as correct, the appellant would be entitled to get only Rs. 10,000/- in cash. On the other hand, even if the case of the first respondent regarding payments is accepted, he would have to pay Rs. 3,20,200/- to the appellants and after reserving Rs. 1,85,000/- payable to the bank, he would have to pay Rs. 1,35,200/- to the appellants. If the case of the appellants regarding payments already made is taken as correct, the first respondent had to pay Rs. 3,50,000/- and if the amount due to the bank is deducted, the appellants would be entitled to get Rs. 1,65,000/-. However, going by the deed prepared by the first respondent, his liability is to pay only Rs. 10,000/- to the appellants and to discharge Rs. 1,85,000/- due to the bank.

11. Exhibit X2 file shows that the first respondent applied for canceling the stamps and for refund, by filing an affidavit stating that the sale deed could not be registered since the 2nd respondent filed a suit and obtained an order of injunction restraining sale of the property. It is stated in the plaint in the suit filed by the first respondent that the correct value was not shown in the sale deed and such a course was adopted to save stamp duty. The first respondent expressed his readiness to get a sale deed executed in his favour on showing the real consideration. It would appear that as agreed between the parties, the first respondent had to pay the stamp duty for the transaction.

12. The contention of the learned counsel for the appellants that the conduct of the first respondent would disentitle him to get a decree for specific performance is to be considered in the light of the above facts. Section 16 (b) of the Specific Relief Act

is relevant in this context. It reads as follows:

> "16. Specific performance of a contract cannot be enforced in favour of a person-
>
> (a) xxxxxxxx
>
> (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract;"

The first respondent has shown only a sum of Rs. 1,95,000/- as consideration in the sale deed as against the agreed consideration of Rs. 5,35,000/-. By this variation, the first respondent would be liable to pay only Rs. 10,000/- to the appellants, and to discharge the debt of Rs. 1,85,000/- due to the Bank. As per the terms of the agreement, after taking into account the payments already made, the first respondent had to pay Rs. 3,20,200/- which stood reduced to Rs. 1,95,000/- by the sale deed prepared by him. If the appellant No. 2 were to execute the sale deed as prepared by the first respondent, she would not be entitled to claim anything in excess of Rs. 10,000/- The act of the first

respondent is clearly in variance with the terms of the contract and by such variation, the relation intended to be established by the contract is varied. The further question is whether the first respondent acted at variance willfully. It is admitted by him that he did so to save stamp duty. That is a willful act. By such variance, not only the owner of the property is put to prejudice, but the first respondent willfully intended to cause loss to the State. Such a party, to our mind, is not entitled to the assistance of the court in invoking the discretionary remedy of specific performance.

13. In this context, it would also be profitable to refer to a few decisions of the Supreme Court and this Court dealing with similar circumstances disentitling specific performance. In **A.I.R. 1996 S.C. 2814:** Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others), it was held:

> "It is settled law that the party who seeks to avail of the equitable jurisdiction of a Court and specific performance being equitable relief, must come to the court with clean hands. In other

words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief".

In Parakunnan Veettil Joseph's son Mathew Vs. Nedumbara Kuruvila's son and others: **1987 (Supp.) S.C.C. 340 = 1988 (1) K.L.T. 7 (S.C),** the Supreme Court held:

"S.20 of the Specific Relief Act, 1963 preserves judicial discretion of courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as instrument of oppression to have an unfair advantage to the plaintiff."

14. In Adimakutty Hydu Ali Vs. Ambujam: **2003 (2) K.L.T. 328,** a Division Bench held thus:

"Before decreeing specific performance, it is obligatory for courts to consider whether by doing so any unfair advantage would result for the plaintiff over the defendant, the extent of hardship that may be caused to the defendant and if it would render such enforcement inequitable, besides taking into consideration the totality of circumstances of each case."

15. The next question to be considered is whether

the first respondent was ready and willing to perform his part of the contract. As per the sale deed got prepared by the first respondent, his liability was to pay a consideration of Rs. 1,95,000/- as against the real consideration of Rs. 5,35,000/- as agreed upon in Exhibit A1 agreement. This is not a question of mere under valuation in the deed. It changes or varies the liability to be met by the first respondent in favour of the appellants. As stated earlier, the first respondent was bound to pay only Rs. 10,000/- to the appellants going by the sale deed, while his liability was to pay the balance sale consideration of Rs. 3,50,000/- (or at least Rs. 3,20,200/- if the contention of the first respondent is accepted) after deducting the amounts paid by him.

16. Readiness and willingness to perform contract, is readiness and willingness to perform the essential terms of the contract as contemplated in Section 16 (c) of the Specific Relief Act. Consideration is an essential and integral term of the contract. A person

who fails to aver and prove that he has performed or has always been ready and willing to perform **the essential terms of the contract which are to be performed by him,** is not entitled to get a decree for specific performance, in view of the specific provision in Section 16 (c) of the Specific Relief Act. The bar of enforcing specific performance of contract includes **violation of any essential term of the contract** as provided in Section 16 (b). Consideration being an essential term of the contract, and the first respondent having violated the same by showing a lesser consideration in the sale deed, is not entitled to the equitable relief of specific performance. Readiness and willingness of the first respondent is to be taken as that manifested in the sale deed got prepared by him, at least at the point of time when the sale deed was agreed to be executed. Such readiness and willingness being in variance with and in violation of the terms of the contract, it cannot be termed as readiness and willingness entitling him to get a decree for specific performance. **In A.I.R. 1978 Patna 192: Bishwanath Mahto**

Vs. Srimati Janki Devi, it was held that the readiness and willingness of the plaintiff to carry out his part of the agreement must refer to the real agreement and the correct terms of the agreement. **In A.I.R. 1952 Nagpur 244: Sobharam Jiwan and another V. Totaram Sitaram,** it was held, following the decision in **Rustomali V. Ahoider Rahaman: 45 C.W.N. 837,** that "in a suit for specific performance it is incumbent on the plaintiff to prove that he was ready and willing to perform the contract as it actually was and not as it is alleged to be by him." It was also held in **Sobharam's** case that making a false plea that a certain obligation under the contract has been discharged does indeed show an unwillingness on the part of the transferee to abide strictly by the contract entered into between him and the transferor. We are in respectful agreement with the view taken by the Patna, Calcutta and Nagpur High Courts in the abovementioned decisions.

17. It is a well settled principle that the

plaintiff in a suit for must plead and prove that he was ready and willing to perform his part of the contract and that he continued to be so. It is founded on the principles of equity. **In Aliyas Vs. Aboobacker: 2006 (4) K.L.T. 282,** it was held: "It is trite that a person who seeks equity shall do equity. Here again, we are of the view that the judicial principles are to be invoked to find whether the discretion is to be exercised to decree or not to decree specific performance. Equitable considerations are quite relevant in the realm of exercise of discretion." In **Snell's Principles of Equity,** 28th Edition, at page 594, it is stated as follows:

> "Specific performance will be refused where the contract is tainted with fraud, even if it is not a fraud on the other party to the contract, but on the public, or where the plaintiff has made some positive misrepresentation, or has been guilty of fraudulent suppression, or if the particulars or conditions of sale are misleading; indeed, in such cases the contract will be rescinded, and cannot be enforced even at law. Even if there is no fraud or misrepresentation sufficient to justify the rescission of the contract, the court may still refuse the equitable remedy of specific performance if the conduct of the plaintiff has been tricky or unfair, for "he who comes into

> equity must come with clean hands," and the court is not bound to decree specific performance in every case in which it will not set aside the contract."

18. In **Aniglase Yohannan Vs. Ramlatha: (2005) 7 S.C.C. 534 = 2005 (4) K.L.T. 280**, it was held: "The basic principle behind Section 16 (c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief." The same view was taken by the Supreme Court in **Indian Financial Association of Seventh Day Adventists Vs. Unneerikutty: (2006) 6 S.C.C. 351 = 2006 (4) K.L.T. 520 (S.C.) and H.P. Pyarejan Vs. Dasappa and others: (2006) 2 S.C.C. 496.**

19. In the light of the principles stated above, we have to examine whether the first respondent is entitled to get the equitable relief of specific

performance. The learned counsel for the appellants, Sri. P.G.Rajagopalan, contended that apart from not showing the real consideration in the sale deed, the first respondent has failed to prove his contention that he paid Rs. 29,800/- to the Canara Bank and therefore, he is not entitled to a decree for specific performance. The learned senior counsel for the first respondent, Sri. S. Venkitasubramania Iyer, on the other hand, contended that there was no willful suppression of material facts, that the reason for undervaluation was shown in the plaint itself and that undervaluation was as suggested by the appellants as well. He also stated that the price agreed upon was the market price, that the balance purchase price payable was deposited before court and that D.W 1 admitted in evidence that he was prepared to execute the sale deed if the full consideration was paid. Sri. Iyer submitted that undervaluation by itself is not an illegal act disentitling the relief of specific performance and that the Stamp Act provides for the consequences of undervaluation. He also relied on the

decision reported in **Mohammed Vs. Rukkiya: 1994 (2) K.L.T. 722.**

20. In **Mohammed Vs. Rukkiya**, the question involved was whether the plaintiff who granted a lease of land to the defendant in contravention of Section 74 of the Kerala Land Reforms Act (prohibiting creation of tenancy after the commencement of the Act) is entitled to maintain a suit for recovery of possession of that land. It was held that to succeed on title, the plaintiff need not rely on the illegal transaction entered into by her with the defendant and it is the defendant who has to rely on that transaction to deny the claim for recovery by the plaintiff. It was held, that the plaintiff could maintain the suit on title. In the case on hand, the question involved is not the illegality of the contract, but the illegality committed by the first respondent in showing a low valuation in the sale deed. Thus Mohammed's case (supra) would not support the contention raised by the first respondent.

21. On going through the pleadings and evidence in the case in the light of the principles mentioned above, and considering the contentions raised by the counsel for the parties we affirm the findings of the court below mentioned in (A) to (C) and (F) in paragraph 6 above and we agree with the reasoning made by the court below. However, we do not agree with the court below in respect of the findings mentioned in (D), (E), (G) and (H) in paragraph 6 above and the reasoning in respect of the same. We are inclined to take the view that the first respondent failed to prove that he was ready and willing to perform his part of the contract. The sale deed, as got drafted by the first respondent would certainly affect the interests of the appellants. We hold the first respondent violated the essential term of the contract that on his part remained to be performed. The evidence would show that the first respondent was not ready to pay to the appellants the full balance consideration on 7-11-1995. On a consideration of the evidence, we are inclined to take the view that by making the appellants to wait in

the Sub Registrar's office, the first respondent facilitated getting an order of injunction by the 2nd respondent. The fact that the first respondent got cancelled the stamps and obtained refund, would also show that he was not ready and willing to perform his part of the contract, as agreed upon between the parties. There was no stipulation in Exhibit A1 that the first respondent should discharge the debt due to the State Bank of Travancore. However, it would appear the appellants had no objection in discharging that debt. There is no case for the first respondent that before the date fixed for registration, he had discharged the mortgage debt due to the State Bank of Travancore. The appellants had not agreed to reserve that amount with the first respondent at the time when the sale deed was to be executed and registered. There is no such stipulation in Exhibit A1 agreement as well. Apart from all these facts, it is to be borne in mind that the first respondent was in possession of the property except 20 cents from the date of agreement. The property consists of the residential house of the

appellants. The pressing circumstances in which the appellants were constrained to enter into the agreement are also relevant; those circumstances would lead us to hold that the appellants rightly refused to execute the assignment deed as the first respondent did not either discharge the mortgage debt due to the bank or pay the full balance consideration.

22. For the foregoing reasons, we hold that the first respondent (Singaravelu Kounder- plaintiff in O.S. No. 206 of 1996) is not entitled to get the equitable relief of specific performance, declaration or injunction as prayed for in O.S. No. 206 of 1996. However, he is entitled to get a decree for return of Rs. 1,85,000/- with interest at 12% per annum on Rs. 1,25,000/- from 9-6-1995 till realization and at 12 % per annum on Rs. 60,000/- from 3-11-1995 till realization. Singaravelu Kounder is in possession of the plaint schedule property excluding 20 cents, from 9-6-1995. In equity, we are of the view that Singaravelu Kounder is entitled to get the value of

improvements made by him in the property. For that purpose, it is necessary to remand O.S. No. 206 of 1996 to the trial court. The trial court shall appoint an experienced Commissioner to assess the value of improvements made by Singaravelu Kounder in the property. The appellants (defendants 1 and 2 in O.S. No. 206 of 1996) shall deposit the value improvements so assessed. The trial court shall dispose of the case within a period of six months from the date fixed for appearance. A.S. No.422 of 1998 is allowed to the above extent and the judgment and decree of the court below to the said extent are set aside.

23. O.S. No. 210 of 1996 filed by the appellants (Sulaiman and Kamarunnisa) is liable to be decreed and we do so. The plaintiffs are entitled to get recovery of possession of the plaint A schedule property in O.S. No. 210 of 1996 from the defendant therein with mesne profits from the date of suit till delivery of possession or the expiration of three years from the date of decree assessing the mesne profits, whichever

event first occurs. The trial court has not assessed the mesne profits. Therefore, O.S. No. 210 of 1996 is also to be remanded to the trial court for the limited purpose of assessing the mesne profits. It is made clear that the plaintiffs in O.S. No. 210 of 1996 would be entitled to execute the decree for recovery of possession only on deposit of the value of improvements as assessed in O.S. No. 206 of 1996 and on deposit of the decree amount therein. A.S. No. 346 of 1998 is allowed and the judgment and decree of the court below in O.S. No. 210 of 1996 are set aside and the suit is decreed as mentioned above; and the suit is remanded for the limited purpose of fixing and quantifying the mesne profits. The trial court shall dispose of the matter within six months.

24. A.S. No. 341 of 1998 is filed by the plaintiff in O.S. No. 206 of 1996 challenging that part of the judgment and decree holding that payment of Rs. 60,000/- made by the plaintiff is inclusive of Rs. 29,800 paid by the plaintiff to the Canara Bank,

negativing his contention that payment of Rs. 29,800/- was in addition to the payment of Rs. 60,000/- Since we have confirmed the finding of the trial court on that aspect, A.S. No. 341 of 1998 is liable to be dismissed and we do so.

The parties shall bear their respective costs. There shall be no refund of court fee. The parties shall appear before the trial court on 10-4-2007.

(KURIAN JOSEPH)
Judge

(K.T.SANKARAN)
Judge

KURIAN JOSEPH&
K.T.SANKARAN, JJ.

A.S.NOS.341,346 & 422 OF 1998

JUDGMENT

15th March, 2007